offenders are included in the one purpose of public protection from crimes."[9]

Many advocates of the indeterminate sentence object to the form of the California statute, providing for a maximum and minimum term. They assert that to achieve its aim, the sentence must be without upper or lower limit. This may be theoretically correct; but the success of the plan will be determined by its practical operation. Prison guards and prison officials as a result of an imperfect administrative system in our state governments may not always be trusted to act independently and intelligently. This point of view was presented by a recent writer,[10] who declares the prisoners themselves are opposed to the indeterminate sentence because the length of their stay would depend too largely on the arbitrary will of not too capable prison officials. Until the system has passed the experimental stage it is perhaps better to place upon prison officials the check of the minimum and maximum limits of sentence. After the statute has been in operation for some time, and its results have been observed, it may be time to abolish artificial limits and carry the indeterminate sentence to its logical conclusion.

L. B. S.

EVIDENCE: JUDICIAL NOTICE OF MUNICIPAL ORDINANCES.—The case of *Marysville Woolen Mills v. Smith*[1] states the almost universal rule that courts of general jurisdiction, civil or criminal, will not take notice of the ordinances of a municipality, but that such ordinances must be pleaded and proved. The appellant in the principal case insisted that while no change was made in the method or mode provided by the state law of taxation, that by various ordinances of the city of Marysville changes with reference to the dates of assessments, delinqencies, sales and other matters provided for in the tax law as laid down in the Political Code in 1876 were made, including a change as to the date when the taxes should become delinquent, and that under said modifications the sale in question, made here on December 4, 1914, was authorized.

The court said, however, that "assuming that the city of Marysville had the authority to change the state law with reference to taxation to the extent contended for by appellant, the trouble in this case is that there is no evidence that this was in fact done." It was the duty of the appellant to show that the general law which governed upon the subject had been

---

[9] 17 Charities, p. 866.

[10] 108 Atlantic Monthly, p. 330 (1911). The article was signed "A Prisoner."

[1] (Sept. 5, 1918) 56 Cal. Dec. 269, 272; Carpenter v. Shinners (1895) 108 Cal. 359, 41 Pac. 473; Chamberlayne's "Best on Evidence", p. 255.

modified or changed. The general law required that the tax sale be made on the first Monday in January, 1915. The certificate of the tax sale produced in evidence, together with the testimony of the officer who made the sale, which was the only evidence on the subject, show that the sale was actually made on the 4th of December, 1914, and at a time when under the law the taxes were not yet delinquent. In the light of the facts of the case, there is no conflict between the decision and the provision of Section 459, Code of Civil Procedure, because there was in the record no reference to the ordinances claimed by the appellant to have been passed, and we may infer that had there been sufficient mention, judicial notice might have been taken as has been done in other cases.[2] However, the court does not definitely say this, but clearly lays down the general rule stated above.

The reason for this attitude on the part of the Superior Courts is that the practice has grown up of regarding municipal ordinances as private statutes and treating them as included in the provision of Section 963, Penal Code.[3] This practice is confirmed by the decisions[4] and has been recognized by the amendment of 1907 to Section 459 of the Code of Civil Procedure, which expressly provides that "a private statute, or an ordinance of a county or municipal corporation may be pleaded by reference to its title and the day of its passage." It is to be noticed, however, that as the statutes now read, there is an advantage given to the prosecution in criminal cases. In such cases, if the ordinance be pleaded by mere reference to its title and the date of its passage, even the superior courts must take judicial notice of it.[5] On the other hand, in a civil case, the ordinance may be so pleaded, but no provision is made whereby the court may thereupon take judicial notice and so it remains to be proved as well. The passage of an ordinance is proved prima facie, by producing in evidence the ordinance book from the custody of the clerk showing the regularity of the proceedings for its adoption; the burden of contradicting the record by showing that it was not passed as stated in the record is upon the defend-

---

[2] Ex parte Childs (1905), 1 Cal. App. 41, 81 Pac. 667; Ex parte Davis (1896), 115 Cal. 445, 47 Pac. 258; City of Tulare v. Hevren, (1899), 126 Cal. 226, 58 Pac. 530.

[3] Cal. Pen. Code, § 963. "In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof."

[4] Metteer v. Smith (1909), 156 Cal. 572, 574, 105 Pac. 735; Tilton v. Russel (1916), 171 Cal. 731, 735, 154 Pac. 860; City of Tulare v. Hevren, supra, n. 2.

[5] Ex parte Davis (1896), 115 Cal. 445, 47 Pac. 258; Cal. Code Civ. Proc., §§ 1918 (5), 1963 (15), 1920.

ant.[6] These code provisions and the decisions under them show that the California courts tend to an attitude of leniency in the matter of judicial notice of municipal ordinances by making both pleading and proof as simple a process as possible without wholly recognizing the practice that has been established by statute in other states, in compliance with which courts of general jurisdiction take judicial cognizance of municipal ordinances.[7]

The general rule that courts of general jurisdiction will not notice such ordinances is subject to several exceptions. For instance, city ordinances when confirmed by legislative enactment or declared to have the force and effect of public statutes will be judicially noticed in all courts.[8] Also, a higher court on appeal will take judicial notice of any matter of which the court of original jurisdiction might take notice.[9] But where a cause is triable de novo on appeal from the municipal court's decision, the authorities are divided as to whether notice will be taken of an ordinance.[10] Moreover, when the proceeding is in a municipal court, instituted for the express purpose of enforcing the municipal ordinance and vested with full jurisdiction for that purpose, the rule is different. In such case, the ordinances are the peculiar law of that forum and it is bound to take notice of their existence,[11] the reason being that every court is presumed to know the law under which it acts.

The justices of the peace of cities of the first to fourth classes inclusive, have the same jurisdiction, civil and criminal, as justices of the peace of townships and township justices' courts. But they have in addition jurisdiction of all proceedings for the violation of any ordinance of any city in which courts are established both civil and criminal, and of all actions for the collection of any license required by any ordinance of any such city and generally exercise all powers, duties and jurisdiction, civil and criminal, of police judges, judges of police courts, recorder's court or mayor's courts within such city.[12] We find that in the justices' and police courts, judicial notice is taken of their municipal ordinances, in both civil and criminal cases.[13] Pleadings in such courts are usually without regard to form,

---

[6] Merced Co. v. Fleming (1896), 111 Cal. 46, 43 Pac. 392; San Diego Co. v. Siefert (1893), 97 Cal. 594, 597, 32 Pac. 644; People v. Zimmerman (1909), 11 Cal. App. 115, 104 Pac. 590.

[7] Pettit v. May (1874) 34 Wis. 666; Woolley v. Louisville (1903) 114 Ky. 556, 71 S. W. 893.

[8] Brady v. Page (1881), 59 Cal. 52.

[9] Gay v. City of Eugene (1909), 53 Ore. 289, 100 Pac. 306.

[10] Village of Minneola v. Martin (1914), 124 Minn. 498, 145 N. W. 383.

[11] People v. Mueller (1914), 168 Cal. 526, 143 Pac. 750; Ex parte Davis (1896), 115 Cal. 445, 47 Pac. 258; Cal. Code Civ. Proc., § 1875 (2).

[12] Cal. Code Civ. Proc. § 103.

[13] Ex parte Luening (1906), 3 Cal. App. 76, 84 Pac. 445; O'Callaghan v. Booth (1856), 6 Cal. 666.

therefore reference to the statute is not necessary;[14] and as already shown, they will be judicially noticed because they are established by law.[15]

Thus we find that municipal courts will judicially notice municipal ordinances, but the superior courts will not. The California system of pleading and proof is, however, a semi-recognition of judicial notice even in the Superior Courts. Why not make it a full recognition, as has been done in some states by statute?[16] A municipal ordinance is well established and authoritatively settled; it is not doubtful or uncertain. Is it not safe to assume its existence without proof and its knowledge within the limits of the jurisdiction of the court? Judicial notice will be taken of a custom or usage which has become general to a sufficient extent;[17] why not of a municipal ordinance? Would it not be "a saving of time, labor and expense in securing and introducing evidence on matters which are not actually bona fide disputed; the tenor of which can safely be assumed from the tribunal's general knowledge or from slight research on its part?"[18]

M. H. V. G.

INTEREST ON UNLIQUIDATED DEMANDS.—When a demand is liquidated the law implies a promise to pay interest at the legal rate[1] from the date it fell due. The theory is either that the law implies a promise to pay interest as damage for the unlawful detention and use of the money[2] or for the breach of the contract.[3] Where the demand is unliquidated, interest runs from the date of judgment, i. e., of entering judgment.[4] The reason is that the debtor is not in default because he does not know how much is due.[5] The latter rule has been so modified by definitions and exceptions that it is of little use.

Liquidated generally means defined, settled, ascertained. In regard to interest, the exception to the rule of unliquidated demands which allows interest on a demand which can be ascer-

---

[14] Watson v. Whitney (1863), 23 Cal. 375; Cal. Code Civ. Proc., §§ 933, 929.

[15] Cal. Code Civ. Proc., § 1875 (2).

[16] Supra, n. 7.

[17] Bernard v. Benson (1910) 58 Wash. 191, 108 Pac. 439; 124 Am. St. Rep. 20, 54, n.; Schultz v. Ford Bros. (1906) 133 Iowa 402, 109 N. W. 614.

[18] Wigmore, "Pocket Code of Evidence", p. 475.

[1] Cal. Civ. Code, § 1917.

[2] Cal. Civ. Code, § 1915; Dodge v. Perkins (1830), 9 Pick. (Mass.) 368.

[3] Sedgwick on Damages (2d ed.) p. 136.

[4] Cutting Co. v. Canty (1904), 141 Cal. 692, 697.

[5] Meyer v. Buckley (1913), 22 Cal. App. 96, 133 Pac. 510; Brady v. Wilcoxson (1872) 44 Cal. 239.